



A Report to the Governor

*on the implementation of
the Recommendations of
the Task Force on
Contracting and Procurement Review*

October 23, 2003



by the Department of General Services

EXECUTIVE SUMMARY

“...the success of procurement reform centers around three main themes: the development of a set of uniform policies and procedures, the development of a robust training and certification program, and the delegation of purchasing authority...with strengthened oversight”

This is the final progress report recommended by the Governor’s Task Force on Contracting and Procurement Review (Task Force) in its August 30, 2002 report to the Governor¹.

On May 20, 2002 Governor Davis created the three-member Task Force to review the state’s contracting and procurement process and recommend changes to strengthen the process, improve the quality and openness of the process, and affect a set of checks and balances to ensure its integrity.

The Department of General Services (DGS) has made great strides during the past year toward implementing the reforms and achieving the goals recommended by the Task Force. Unfortunately, further efforts will be compromised by staffing reductions and the fiscal constraints currently facing the state.

In summarizing our progress, we found that the success of procurement reform centers around three main themes:

- The development of a set of uniform policies and procedures that govern the contracting and procurement process
- The development of a robust training and certification program for state contracting and procurement officials
- The delegation of purchasing authority to state agencies² after they meet specified criteria, coupled with a strengthened oversight program

¹ Recommendation #20.

The laws and rules governing the state's contracting and procurement processes are complex and are often difficult to understand. There are different laws and rules applicable to different types of transactions. To compound the situation, there is no single source of information for contracting and procurement policies based on these laws. This leaves it up to contracting and buying professionals to interpret the laws themselves. Further, there is no single source for procedures and, as a result, contracting and buying professionals use a variety of procedures that they individually develop to conduct their work.

In 2002, and in response to Task Force Recommendation #7, the DGS initiated a project to conduct an independent diagnostic review of the contracting and procurement laws, policies, practices, procedures and operations.³ A key suggestion of the Eskel-Porter Consulting (EPC) report was that the DGS should centralize contracting and procurement policy development. DGS is establishing a procurement policy office in the department. The responsibility of the office would be to develop, disseminate and maintain procurement policies. Given the current construct of contracting and procurement law in California, this recommendation will be a challenge, but one DGS plans to address as resources allow.

"DGS shall develop and deliver ... a comprehensive training and certification program..."

The DGS has a significant responsibility of ensuring that acquisitions are conducted legally and within the bounds of state policy. In recognition of the complexity of the laws, rules, policies and procedures controlling the state's procurement functions, a well-trained contracting and buying staff is essential. The DGS, in conjunction with California State University, Northridge, recommended a comprehensive training and certification program for state contracting and procurement professionals

² As used in this report, "state agency" or "agency" includes all state agencies, departments, officers, offices, commissions, boards, bureaus, institutions, hospitals, training facilities, data centers, or other state entity.

³ The CORE Project Final Report to the California, Department of General Services, Review and Analysis of Uniform Purchasing Practices. Eskel-Porter Consulting, Inc., August 2003.

designed to enhance individual effectiveness. The DGS began offering basic courses in April 2003, and plans to develop and offer Intermediate and Advanced Certificate Programs. Ultimately, the level of training received, along with the experience of the staff, will be factors in determining a state agency's level of delegated purchasing authority.

The Task Force Report included a number of recommendations addressing the purchasing delegation program. Several of the recommendations dealt specifically with the levels and types of purchasing authority granted, and under what conditions. The Task Force recommended DGS should establish standards for the granting of purchasing authority at various levels, and factors such as training, demonstration of competency and demonstrated capability to conduct self-audits should be considered. The DGS has made tremendous progress during the past year, strengthening the delegation program, all of which is sprinkled throughout this final report, as follows:

- The purchasing authority database was revamped to accommodate the use of leveraged procurement agreements and better monitor the transactions conducted under delegated authority.
- Procurement and Contracting Officers were established at all state agencies.
- A new Purchasing Authority Manual is nearly completed.
- Criteria for audits or compliance reviews have been established, and the first random reviews of non-IT services contracts were conducted in August 2003.

A comprehensive system of checks and balances needs to be put in place to ensure that transactions conform to state law and policy, and protect the state's business interests and needs

Finally, the Task Force recognized that a comprehensive system of checks and balances needs to be constructed to ensure that transactions conform to state law and policy and protect the state's business interests and needs. The Government Code places in DGS "*general powers of supervision over all matters concerning the financial and business policies of the state*". This authority carries with it many duties including the responsibility to conserve the financial interests of the state and to prevent as far as possible any improvident acts by state agencies. All high-risk contracts entered into by state agencies that require DGS approval are presently being reviewed by the Office of Legal Services. However high-risk IT contracts were singled out for special attention in the Task Force Recommendation #15. The Task Force recommendation directed that active legal participation occur in all high-risk transactions, including IT transactions.

The DGS has started to address this deficiency in past practices through the adoption of Administrative Order 03-12, that required participation of legal staff in all stages of the acquisition process of DGS high-risk IT contracts. Both the Legal Office and the Procurement Division are engaged in developing and formalizing a systematic approach to ensure the direction of the Administrative Order is carried out. Once this process has been fully implemented, the DGS will develop the processes and procedures necessary for ensuring the high-risk IT contracts entered into by other state agencies are also subject to active legal participation.

These three initiatives are interdependent and key to the success of procurement reform.

These three initiatives are interdependent and key to the success of procurement reform. The policies and procedures must be standardized to provide contracting officials and buyers with the tools to perform their jobs in a consistent manner. A robust system of checks and balances must be implemented and maintained to ensure the integrity of procurement processes. The state must implement a strong training and certification program to keep contracting and procurement professionals informed of the laws, policies and procedures, as well as the latest information and best practices in the contracting and procurement arenas. Finally, linking a state agency's level of purchasing authority to factors that include the level of training received and the experience of the state agency's staff, will ensure staff meets certain minimum standards before they execute contracts and obligate taxpayer dollars as agents of the state.

In the following pages we summarize the progress we have made in implementing each of the remaining 19 recommendations of the Task Force. We noted whether each recommendation could be implemented in the long-term or short-term. These time frames were originally established by the Task Force and they defined long-term as longer than one year.

We have also indicated the status of each recommendation. Six recommendations are completely implemented; 10 are in progress; and the implementation of 4 of the recommendations is dependent on retaining sufficient resources. With respect to the four recommendations that are dependent on retaining sufficient resources, the state's current fiscal situation—including budget cutbacks and employee layoffs—is presenting unique challenges to ensuring their full implementation.

RECOMMENDATION #1: The DGS shall broaden the scope of the Quality Assurance program so that any state agency that conducts any state procurement process must do so under authority granted by the DGS, including orders placed with contractors holding leveraged procurement instruments established by the DGS, such as CMAS and Master Agreements. Absent this authority, the DGS must conduct an acquisition on behalf of the state agency.

IMPLEMENTATION: Short-term

STATUS: Near Completion

The DGS Procurement Division (PD) is in the final stages of expanding the Quality Assurance Program. To this end, the DGS has completed the following tasks:

- The use of the state's leveraged procurement agreements, including California Multiple Award Schedules (CMAS), Statewide Commodity Contracts, and Master Agreements, were incorporated into the delegated purchasing authority program. A memo was issued to all Procurement and Contracting Officers (PCOs) notifying them of this change in January 2003.
- The purchasing authority database was revamped to accommodate the use of leveraged procurement agreements and to better monitor the types, level, and status of the various agencies' purchasing authority.
- A new purchasing authority numbering system was established to enable DGS and its client agencies to better track purchasing authority status. This will facilitate the accessibility of the newly-established database.
- The PD identified 48 agencies that historically have not requested purchasing authority, but instead have relied on the use of leveraged procurement agreements, or on other agencies to do their purchasing. All of these agencies have designated a PCO, and the PD is working with these agencies to grant them purchasing authority.

The following actions are expected to be completed by the end of October 2003:

- A new Purchasing Authority Manual will be released. This new manual will include the use of leveraged procurement agreements and other requirements established by procurement reform. The manual is in its final draft and is under review by subject matter experts and individuals in selected agencies.

- The use of a new Application for Delegated Purchasing Authority will be implemented. Agencies will use this new application document to request new or renewed purchasing authority, including the use of the state's leveraged procurement agreements.

RECOMMENDATION #2: The DGS shall adopt a policy that prohibits state agencies from placing orders through CMAS or the Master Agreement program for large-scale IT system integration projects, unless such acquisition was approved as part of a feasibility study report.

IMPLEMENTATION: Short-term

STATUS: Complete

On March 17, 2003, the DGS issued Management Memo 03-04 that stipulated that California Multiple Award Schedules (CMAS) and Master Agreements could not be utilized for the acquisition of large-scale information technology (IT) system integration projects.

RECOMMENDATION #3: Specifically, with respect to the CMAS program, state agencies shall be required to follow the Management Memo 02-19 Guidelines requirement to solicit and obtain three price quotations, including at least one certified small business CMAS contractor, before placing their orders. In addition, no single order should exceed \$500,000.

IMPLEMENTATION: Short-term

STATUS: Complete

The CMAS program publishes an Agency Packet that contains policy and procedure guidelines that agencies must follow when purchasing from a CMAS agreement. The Agency Packet was revised to incorporate the requirements of Management Memo 03-10 (that superseded Management Memo 02-19, Rev 3) requiring agencies to solicit and obtain three price quotations, including at least one from a certified small business and/or disabled veteran business enterprise, if available. Also included is the requirement that no single order may exceed \$500,000. The update was made available via PD's website in mid-March 2003.

RECOMMENDATION #4: The DGS shall develop written standards and criteria that will apply to any CMAS agreement established for vendors that do not hold federal General Services Administration supply schedules.

IMPLEMENTATION: Short-term

STATUS: Complete

The DGS has the following standards and criteria:

Vendors Without Base Agreements

The DGS has written standards and criteria that apply to any CMAS agreement established for vendors that do not hold federal supply schedules or non-federal multiple award schedules.

Non-Federal Based Agreements

The DGS revised its written standards and criteria for CMAS agreements that are based on non-federal schedules to:

- Allow negotiated products, services and prices only if the federal government approves them.
- Require that the award of the non-federal schedules be based on minimum product and/or service requirements.

Evidence of multiple award and competitive bid or cost-compared pricing will continue to be required.

In addition to the above, the DGS:

- Developed a new policy prohibiting integrated IT projects from being performed under the CMAS program.
- Developed a new policy that requires an Information Technology Procurement Plan (ITPP) for an IT project, which would identify the acquisition methodology and allow DGS approval prior to procurement.
- Implemented a hard cap of \$500,000 on CMAS acquisitions.
- Initiated a partnership with the vendor community (Information Technology Association of America) to formulate additional CMAS reforms.

RECOMMENDATION #5: The DGS shall perform random audits or compliance reviews of state agencies' contracting and procurement transactions executed under authority granted by the DGS, including non-IT services contracts. As part of this recommendation, and in order to maximize state resources, the DGS should also establish protocols for the conduct of audits by those state agencies that have internal auditors. Any such protocols should necessarily include reporting to the DGS of the findings of an internal audit.

IMPLEMENTATION: Short-term

STATUS: Near Completion

The DGS has established the following categories of audits or compliance reviews:

- Upon direction of the DGS Executive Team
- Allegation of a compliance irregularity
- Identification of a "trend" or "hot topic"
- Need for examination of specific procurement categories (i.e., CMAS, Master Agreements, non-competitively bid contracts, etc.)
- For non-IT services in the dollar amounts of \$5,000 to \$50,000 (\$75,000 in some agencies)
- Need to confirm correction of compliance review irregularities

The DGS PD Purchasing Authority Management Section began conducting its first random reviews in August 2003, in the area of non-IT services.

Also, the DGS' Chief Auditor and a Procurement Division representative met with the Chief of the Department of Finance's (DOF) Office of State Audits and Evaluations to discuss establishing protocols for audits conducted by state agencies that have internal auditors. At that meeting, it was agreed that the DGS would take the lead in revising the DOF Audit Guide. That guide is used by the internal auditors to conduct biennial internal control reviews under The Financial Integrity and State Managers' Accountability Act of 1983. The DGS' revisions will include information on leveraged procurement agreements, non-competitively bid contracts, and non-IT services. It is expected that these revisions will be in place for the next audit cycle, which begins in January 2004.

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RECOMMENDATION #6: The DGS shall establish consistent standards tied to dollar thresholds that must be met in order for a state agency to be granted higher levels of procurement authority. These standards should take into consideration training, certification, demonstration of competency, demonstrated capability to conduct internal legal review, and capability to conduct self-audit or assessment through various means.

The standards and criteria established by DGS should be used to increase authority to those agencies that demonstrate excellence in their contracting and procurement processes. Those that fail to meet the standards should have their authority reduced or revoked.

These criteria, as a minimum, should take into consideration the following:

- A state agency's contracting and procurement practices;
- The degree to which a state agency meets the required guidelines; especially those addressing competition;
- The degree to which a state agency meets all statutory requirements;
- The degree to which a state agency reports to the DGS on a timely basis;
- The degree to which a state agency completes and submits other reports required by law;
- A state agency's progress toward achieving the business participation goal established in statute for disabled veteran business enterprises;
- A state agency's progress toward achieving the small business participation goal established either by Executive Order or by the department pursuant to statute;
- The degree to which a state agency establishes or modifies written policies and procedures as suggested by the DGS;
- The degree to which a state agency maintains the required training levels for their contracting and procurement staff; and
- Other factors.

IMPLEMENTATION: Long-term

STATUS: In Progress

As a prerequisite for implementing this recommendation, the DGS must complete the revision of the Purchasing Authority Manual that is being accomplished as part of Recommendation #1. The revised manual will include information on leveraged procurement agreements and other new requirements brought about by procurement reform.

Once the standards are finalized, full implementation of this recommendation is expected in the spring or summer of 2004.

IMPLEMENTATION: Long-term

The DGS recognizes that the laws and rules governing state acquisitions may be inconsistent or ambiguous. In order to clarify the current methods for conducting the acquisitions of goods and services, and to improve the ability of the state to carry out its purchasing function, the DGS contracted with the consulting firm Eskel-Porter Consulting, Inc. (EPC) to undertake a comprehensive evaluation of the core issues hindering the efficient acquisition of goods, non-IT services, and IT. The consulting firm looked at the roles of the control agencies as well as the roles of state agencies with delegated purchasing authority. The DGS received the final report in August 2003 and is in the process of reviewing the recommendations for possible implementation. It may not be possible to implement the recommendations due to the state's current fiscal crisis and the possible reductions in staff.

The key findings of EPC are:

- The state has a need for centralized, uniform contracting and procurement policies. Over the past several years, the DGS abandoned the State Administrative Manual (SAM) as the single source of state acquisition policy, in favor of creating the California Acquisition Manual (CAM) and the State Contracting Manual (SCM). In addition, the Department of Information Technology created the State Information Management Manual (SIMM) for IT policy and procedures. Each of these manuals contains procurement and contracting policy that may be unique, may overlap or even be contradictory. To compound the problem, these manuals are not kept up to date. The report recommends that DGS use SAM as the state's official policy manual and the SCM as the procedures manual.
- There is no single source for development or maintenance of contracting and procurement procedures. Individual buyers within the DGS and buyers within agencies that have delegated purchasing authority use a variety of processes and procedures to perform their work. The DGS does not offer agencies with delegated purchasing authority models or templates for their use in developing procedures; they are left on their own to interpret procedures directly from the many source documents. The lack of standardized procedures makes it difficult for DGS buyers as well as agency buyers to apply policies in a consistent manner. Foundational purchasing procedures will be required to successfully put uniform purchasing policies into place.
- There is a need for an office responsible for policy and procedure within the DGS at an organizational level that reflects executive management's commitment to its role. This office should be staffed with appropriately skilled and dedicated resources to enable its success. The office would be responsible for developing and maintaining policies and procedures from their inception.

RECOMMENDATION #8: The DGS shall develop and deliver to state agency contracting and procurement officials—including DGS staff—a comprehensive training and certification program. Initial courses should be made available to state agencies within 90 days. More specialized training required for certification should commence within one year.

IMPLEMENTATION: Long-term

STATUS: **Dependent on
Maintaining Sufficient
Resources**

During the last half of 2002, the DGS, in conjunction with California State University, Northridge, conducted a major survey designed to: (1) identify the knowledge, skills, and abilities (i.e., competencies) required by individuals with procurement and contracting responsibilities; (2) conduct a needs assessment based on these competencies; and (3) recommend a comprehensive training program designed to enhance individual competencies.

Based on the findings of the Task Force on Contracting and Procurement Review and the results of the survey, the DGS began implementing this recommendation by presenting its first course offerings in April 2003. The first courses offered were *Ethical Decision Making* and *California Leveraged Procurement Agreements*. To date, DGS has presented seven sections of each course and approximately 600 contracting and procurement professionals completed each course.

The two courses are intended to be part of a larger Basic Certificate Program. The Basic Certificate would be granted upon completion of 64 hours of course work designed for contracting and procurement professionals who handle lower-dollar-value acquisitions. Plans call for a total of eight courses and five workshops to ultimately be offered as part of the Basic Certificate Program, as follows:

Basic Courses

- Procurement Orientation (a review of relevant statutes, regulations, policies, etc.)
- Contract Law
- Ethical Decision Making
- Overall Procurement Process (planning, strategy, etc.)
- Procurement Types (RFP, IFB, RFQ, RFO, NCB, etc.)
- Negotiation
- Leveraged Procurement Agreements
- Case Study

Basic Workshops

- Statement of Work
- Documentation
- Evaluation, Including Preferences
- Attorney General's Ethics (Conflict of Interest)
- Services Contracts

The DGS planned to offer an Intermediate Certificate Program consisting of 32 hours of course work and an Advanced Certificate Program designed for procurement officials responsible for the highest-dollar-value, most-complex, and highest-risk acquisitions. Course development for these programs, and indeed, the program itself, are contingent on the retention of adequate resources. At the time of this report, the program manager and six of eight trainers are subject to layoff. Further, the inability to implement Recommendation 7 due to budget constraints will eliminate much of the source material for this training program.

Ultimately, the level of training and the experience of an agency's staff will be a factor in determining the level of delegated purchasing authority the agency is granted.

RECOMMENDATION #9: The DGS shall adopt clear standards of conduct for state contracting and procurement officials. Violators of the standards should be subject to disciplinary action. This will necessitate careful collaboration and coordination with the State Personnel Board, the Department of Personnel Administration, and the labor unions.

IMPLEMENTATION: Long-term

STATUS: In Progress

After a careful review of the relevant laws and initial contacts with the Department of Personnel Administration, the DGS prepared a draft set of Standards of Conduct for Procurement and Contracting Professionals.

The draft was circulated to PCOs for review and comment, and their concerns were incorporated into the draft. Once DGS management approves the standards, an implementation plan will be developed.

RECOMMENDATION #12: The DGS shall facilitate industry and state stakeholder participation in continuous improvement of contracting and procurement processes through the establishment of advisory councils.

IMPLEMENTATION: Short-term

STATUS: Complete

The DGS PD has satisfied the short-term goals of this recommendation by establishing both an Industry Workgroup, and a group of PCOs (Recommendation #18), while continuing to work with other existing industry and state stakeholder workgroups on issues relating to contracting and procurement improvement.

The first meeting of the Industry Workgroup, which consists of suppliers who were recommended for participation by PD management and volunteers, took place on May 20, 2003. The purpose of the meeting was to explain the impetus for procurement reform, talk about all reform initiatives, discuss the terms and conditions for IT contracts, and discuss the plan for the development and consolidation of state contracting policies and procedures. Later this year we will again meet with the Industry Workgroup to discuss the findings of the independent consultant report on policies and procedures (Recommendation #7), and provide further updates on reform-related issues.

For state stakeholder participation, the DGS continues to use existing groups such as the Small Business Advocates, Customer Forums, the DGS Partnership Council, and the PCOs to provide input on DGS' procurement reform efforts. Quarterly meetings of the PCOs are being held to provide a venue for discussions of procurement reform issues. Most recently, meetings were held on June 16 and June 23, 2003, and covered the following topics:

- The process for obtaining a purchasing_delegation (Recommendation #1)
- The development and consolidation of state contracting policies and procedures (Recommendation #7)
- The schedule and content for the upcoming training and certification program (Recommendation #8)

The participants of all of these workgroups, both from industry and within state government, are being asked to act as sounding boards on issues relating to procurement reform.

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RECOMMENDATION #13: The DGS shall implement an integrated system to track transactions executed by state agencies and to capture important data related to those transactions on a near-real-time basis. The DGS should determine the feasibility of generating mandated reports from the system as well.

IMPLEMENTATION: Short-term

STATUS: **Dependent on
Maintaining Sufficient
Resources**

The State Contract and Procurement Registration System (SCPRS) was successfully launched statewide July 1, 2003. This internet-based system captures data on all significant state purchases on a near-real-time basis and permits state agencies to retrieve information about their contracts. Authorized DGS users are able to retrieve various reports of summary information about state agencies' contracting and purchasing activities as well.

All state agencies whose contracts are generally subject to DGS review and approval are required to input data into the SCPRS on all their purchases over \$5,000. This includes grants, subvention contracts, public works and architectural and engineering services contracts. The system is designed to generate a unique "registration number" for each contract entered. The *Contract/Delegation Purchase Order, Form STD. 65*, was revised to capture this number.

Agencies input the following information on each contract:

1. The name of the agency making the purchase
2. The date the entry was made into SCPRS
3. The sub-unit name (e.g., PD is sub-unit of DGS)
4. Contract type
5. Agency delegated purchasing authority number
6. Description of goods/services
7. Contractor name
8. PIN Number
9. Agency contract number /purchase order number
10. Whether financed or leased
11. Vendor FEIN
12. Contracting method
13. Leveraged contract number
14. Certified small business (prime contractor only)
15. Original beginning term
16. Original ending term
17. Original contract amount

In addition, the following information is collected on each contract amendment:

1. Description of amendment
2. The date the entry was made into SCPRS
3. Amendment beginning term
4. Amendment ending term
5. Amount of amendment
6. Cumulative total of all amendments and original contract

The SCPRS was designed to be user-friendly and it is supported by online training in two formats: Windows Media and a PowerPoint demonstration. To date, 549 employees have completed the online training.

Since it was launched on July 1, 2003, the SCPRS has captured over \$2 billion in state contracts, representing 95 agencies and over 4800 contracts.

Further development of the SCPRS (i.e., links to the disabled veteran business enterprise, small business and microbusiness databases) is in jeopardy due to potential reductions in staff in the DGS Office of Technology Resources and the PD. Work on Phase 2 of the project is on hold due to budget constraints.

RECOMMENDATION #14: The DGS shall implement a comprehensive electronic procurement (eProcurement) system for all state contracts, to include:

- Public access to contracting and procurement opportunities, as well as historical information;
- Links to online policies and procedures, a decision support system, and online training;
- Product and pricing comparisons;
- Rules-based approval routing so that no transaction can be issued without appropriate approvals;
- Reverse auctions for commercial off-the-shelf items; and
- Data capture for all transactions, and generation of required reports, eliminating redundant reporting wherever possible.

IMPLEMENTATION: Long-term

STATUS: Dependent on Maintaining Sufficient Resources

The CAL-Buy eProcurement system, which went live in early spring, 2001, automated purchasing from more than 250 statewide commodity contracts and more than 300 buyers in five state agencies including the DGS, Corrections, Caltrans, Highway Patrol, and the Youth Authority. It also automated the purchasing of seven local governments.

CAL-Buy has successfully reduced procurement cycle time, saving the state both time and money. In addition, it includes several features that provide for increased accountability, including automated workflow for approval of orders based on dollar thresholds, enforcement of contract expiration dates, and a detailed audit trail of all activity related to purchases. CAL-Buy made ordering from certified small businesses just as easy as from large ones. Approximately 43% of the \$42 million spent to date has been awarded to small businesses.

For Phase 2 of the CAL-Buy project, the DGS planned to conduct a study to evaluate its baseline business requirements, an analysis of the marketplace and an assessment of the business vehicles subject to automation and the alternative methods of automating them, pending budgetary approval to do so. Regretfully, these activities were not funded in the 2003/04 fiscal year, so the CAL-Buy system will continue in maintenance mode for the foreseeable future.

The DGS sponsored legislation, AB 722 (Matthews), to seek authority to conduct reverse auctions, a competitive online solicitation process in which vendors compete against one another in an online, real time open and interactive environment, essentially an eBay® environment in reverse. The bill passed and becomes effective January 2004. Research has shown that reverse auctions conducted by other states have resulted in significant savings.

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RECOMMENDATION #15: The DGS shall ensure active legal participation in all high-risk transactions. As a minimum, the following types of transactions should be identified as high-risk:

- All IT large-scale system integration projects;
- Transactions where there is a history of protest or litigation for this or like contracts;
- Public safety;
- Acquisition of unique or specially manufactured goods or services;
- Complex projects;

- Proposed deviations from standard processes or terms and conditions (e.g., advance payments, modification to warranty, indemnity, or liability language, etc.);
- High profile transactions;
- Potential conflicts of interest;
- Hazardous activity;
- Federal matching funds; and
- Goods and IT goods contracts over \$500,000, IT services contracts over \$200,000, and non-IT services contracts over \$50,000.

The DGS shall consider delegating this review, as appropriate, to those state agencies that have in-house counsel trained in contract law.

IMPLEMENTATION: Short-term

STATUS: In Progress

The DGS, in consultation with the state Chief Information Officer (CIO), recently issued Administrative Order 03-12⁴ that defines high-risk IT contracts, and states that high-risk IT contracts subject to direct review by the DGS must have legal review and approval. The policy defines high-risk IT procurements as those solicitations or contracts: (1) identified by the Department of Finance or the State Chief Information Officer as high-risk; (2) that are over \$500,000 for goods or over \$200,000 for services; or, (3) that contain non-standard terms. Further, the policy provides for the assignment of legal counsel at the earliest time practical in the acquisition process, the establishment of a legal participation plan and the obtaining of a legal counsel certification that the proposed contract is permissible as to legal form.

Low and medium-risk IT contracts must have legal review if specific criteria are met. This is a first step in ensuring legal review of all high-risk contracts.

With respect to other identified high-risk contracts, the DGS Office of Legal Services continues to review all those transactions that are subject to the department's approval. The DGS believes the legal review of these transactions accomplishes the direction of the Task Force in the area of non-IT transactions.

A survey conducted by the DGS revealed that legal expertise in contract law varies widely among state agencies. Based on these findings, the DGS plans to develop training programs to assist state agencies in identifying high-risk contracts. Once training has been completed state agencies will be better able to identify those high-risk transactions and have them submitted to DGS for legal review. What remains to be determined is whether there are sufficient legal resources in state agencies that can be committed to develop a level of expertise in government procurement law sufficient to adequately protect the state's interests.

⁴ August 14, 2003

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RECOMMENDATION #16: The DGS shall develop and deliver training to state agencies on conducting an initial, high-risk review, using the criteria developed by the DGS. State agencies shall forward to the DGS for review and approval those contracts that meet any of the high-risk criteria. The DGS shall consider delegating this review, as appropriate, to those state agencies that have in-house counsel trained in contract law.

IMPLEMENTATION: Short-term

STATUS: In Progress

The DGS developed criteria for high-risk Information Technology (IT) contracts (Recommendation #15) and has plans to use the same methodology to develop criteria for other high-risk categories of contracts.

The DGS plans to offer training to state agencies in the identification of high-risk contracts.

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RECOMMENDATION #17: The DGS shall develop electronically-based model contract templates with standard terms and conditions for use by state agencies in order to expedite review processes for low-risk contracts.

IMPLEMENTATION: Long-term

STATUS: Partially Complete

The DGS worked collaboratively with the Information Technology Association of America (ITAA), to establish new model contract provisions that were posted on the DGS website in early 2003. This was the first step in developing the legal foundation for the model contract templates needed to adopt this recommendation.

Since that time, the DGS has contracted with a legal firm to assist in the development of other contract models. A prototype for a web-based contracting model has been developed. A plan for additional work necessary is under consideration.

[illegible]

RECOMMENDATION #19: The DGS shall authorize individual signature authority for contracting and procurement officials based on position held, experience, training and certification.

IMPLEMENTATION: Short-term

STATUS: Near Completion

The DGS developed a draft policy addressing the issue of which individuals should be granted signature authority. The draft policy has been sent to PCOs for review and comment. Upon receipt of those comments, the draft will be finalized for DGS management review. It is expected the new policy will be implemented in September 2003.

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RECOMMENDATION #20: DGS shall evaluate the effectiveness of its efforts to implement all short-term recommendations, and prepare a report to the Governor on the status of those efforts six months after the report is adopted. Another status report shall be developed and delivered to the Governor one year after the report is adopted.

STATUS: Complete